UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 17 2004

OFFICE OF THE
ADMINISTRATOR

Mr. Jeff Cohen
White House Task Force on Energy Project Streamlining
1000 Independence Avenue, WH1
Washington D.C. 20585

Re: Proposed LNG Facility at Cabrillo Port

Dear Mr. Cohen:

I am writing in response to your memorandum of June 14, 2004. You have requested EPA's response to a series of questions about the Proposed LNG Facility at Cabrillo Port, off the coast of Ventura, California, and a status report. Enclosed is the response to your questions which our Region 9 Office has prepared in consultation with other relevant EPA Headquarters and relevant Regional offices. We have also included June 18, 2004 letter from Ventura District Air Pollution Control ("District") interpreting the offset requirement of the District Rule 26; the District Rule 26.2; and the most recent letter from EPA Region 9 Air Division to the project applicant, BHP Billiton LNG International Inc. ("BHP"), in which EPA responds to BHP's arguments concerning application of Rule 26. See Attachments 1, 2, and 3.

EPA will continue to coordinate internally with relevant EPA Headquarters and Regional offices, and with the Coast Guard and other state and federal agencies on this project. As with any permit applicant, we will give fair and timely consideration to BHP's permit applications.

If you have any questions concerning the enclosed response, this project, or EPA's coordination of LNG facility permitting in general, please contact my office or contact the staff member identified in the enclosures.

Sincerely,

Barbara McLeod
Senior Special Assistant

Enclosures:
Response to Task Force Questions
Attachments:
1. Ventura District's June 18, 2004 letter to EPA
2. Ventura Rule 26.2
3. EPA's June 29, 2004 letter to BHP

email distribution:

US Coast Guard:
- Mark Prescott
- Frank Esposito

USMARAD:
- Francis Mardula

EPA Region 9:
- Amy Zimpfer
- Kerry Drake
- Gerardo Rios
- Margaret Alkon
- Nahid Zoueshtiagh
- Marcela VonVacano
- Eugene Bromley
- Lisa Hanf
- David Tomsovic
- Shanna Draheim

Response to Questions listed in June 14, 2004 Memorandum
From
White House Task Force On Energy Project Streamlining
To U.S. EPA

Each question highlighted in bold is followed by EPA Region 9 response.

1. **Do the determinations made to date on the Cabrillo Port application represent EPA nationwide policy on implementation of the Deepwater Ports Act and the Clean Air Act to offshore LNG facilities?**

   Yes. The determinations made to date on the Cabrillo Port (BHP Billiton International (BHP)) air permit application represent EPA nationwide policy on implementation of the Deepwater Port Act (DPA) and the Clean Air Act (CAA) with respect to offshore LNG facilities. However, nationwide implementation of the DPA and CAA to offshore LNG facilities will result in variation from facility to facility in the specific requirements which might apply to a facility because there is variation in the air quality of coastal states adjacent to proposed LNG facilities, and also variation in the requirements of the various state implementation plans (SIPs) adopted under the Clean Air Act. Under Section 1518 of the DPA, the applicable law of the nearest adjacent coastal State is the equivalent of the law of the United States, unless inconsistent with Federal law. The Cabrillo Port is the first deepwater port facility proposed to be located offshore of a nonattainment area.

2. **Is EPA's review for the proposed Cabrillo Port project consistent with those followed for EPA reviews of other LNG facilities, including coordination of the air permit and NEPA reviews?**

   Yes. In Region 9, a team consisting of staff and managers from the Air Division, Water Division, Office of Federal Activities, and Office of Regional Counsel have been working on the evaluation, analysis, decision-making, review and/or permitting of this proposed project, with input and involvement from Headquarters personnel to ensure national consistency. In reviewing this application, Region 9 has communicated the issues and shared information with Regions 6 and 4, who are currently reviewing or processing air applications for offshore LNG facilities.

   Please note that there are some proposed LNG facilities that would be sited onshore or within the territorial waters of a state. Those LNG facilities are not subject to the DPA, but they remain subject to the requirements of the CAA (and other applicable laws). For land-based LNG facilities, the state or local authority is usually the air and water permitting authority, and EPA would have an oversight responsibility.

Under the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 C.F.R. 1500-1508), and Section 309 of the CAA, EPA reviews and comments on certain Federal actions affecting the quality of the environment. As a signatory agency to the national "Memorandum of Understanding Related to the Licensing of Deepwater Ports," EPA has participated in a variety of early involvement activities (Section IV.A.of the MOU). We are also acting in the capacity of a cooperating agency (40 C.F.R. 1501.6), since EPA's issuance of a National Pollutant Discharge Elimination System (NPDES) permit for new sources requires EPA's compliance with NEPA. (See 33 U.S.C. § 511(c)(1)) We have reviewed the Cabrillo Port deepwater port application for completeness and provided written comments to the Coast Guard on September 23, 2003, engaged in ongoing coordination with the Coast Guard, and on March 31, 2004 submitted detailed scoping comments to the Coast Guard in response to a February 27, 2004 Notice of Intent in the *Federal Register*. EPA also expects to review and comment on the administrative Draft Environmental Impact Statement (EIS) when it is made available by the Coast Guard for two weeks, prior to the public comment period. EPA will also provide formal written comments to the Coast Guard during the public comment period, if necessary. Cabrillo Port is the first deepwater LNG project proposed in Region 9.

3. **Between January and April 2004, what data and analyses did EPA rely on to determine that the Cabrillo Port project did not constitute a Prevention of Significant Deterioration application?**

EPA has not made such a determination. Based on our review of BHP's application materials over the past several months, EPA has concluded that both a PSD application and a nonattainment new source review (NSR) application are required for the Cabrillo Port Project. In January 2004, consistent with our September 2003 notification that the application had failed to provide an analysis of relevant SIP provisions, EPA informed the Applicant that we were determining the applicability of NSR to this proposed deepwater port. Neither this statement, nor our April 5, 2004 letter constituted a conclusion that a PSD application was unnecessary. To the contrary, we concluded that both a PSD and NSR application were required.

Depending upon the situation, both PSD and NSR requirements can apply to the same project because an area can be attainment for certain pollutants and nonattainment for others. The PSD requirements apply to any new major source, as defined in 40 C.F.R. § 52.21(b)(1), which would emit a pollutant in an area which is in attainment with the federal ambient air quality standards for such pollutant. See 40 C.F.R. § 52.21. In contrast, the NSR requirements apply to any new major source which would emit a pollutant in a nonattainment area.

Ventura County excluding the Channel Islands of Anacapa and San Nicolas Islands is classified as a severe nonattainment area for the ozone one-hour standard, and a moderate nonattainment area for the ozone 8-hour standard. All of the Channel Islands, including Anacapa and San Nicolas, are designated as unclassifiable/attainment for the ozone 1-hour and 8-hour standards. Ventura County and all of the Channel Islands are designated as attainment, unclassifiable, or better than national standards for SO2, carbon monoxide, PM-10, and NO2. 40 C.F.R. § 81.305. To date, EPA has not promulgated separate area designations for portions of the outer continental shelf (OCS), because OCS sources are covered by the OCS Air Regulations. The emissions from the proposed source would include nitrogen oxides, volatile organic compounds, CO, SO2, and PM10. Because of its potential to emit CO, the source is subject to PSD requirements. It is this determination which is reflected in our January 2004 letter. It is the applicability of the NSR provisions that we investigated between January 2004 and the April 5, 2004 letter. In April we determined that the Ventura County's NSR applies. Subsequently, we informed BHP that the Cabrillo Port project must meet the Ventura District's NSR rules requirements for air emissions offsetting (See Subsection 26.2.B of Rule 26).

In coordination with OAQPS, OGC, and other EPA Regions involved in the permitting of DPA sources, Region 9 ultimately determined that the Ventura County Air Pollution Control District (Ventura District) was the applicable onshore area and that the Ventura District NSR rules applied to this proposed deepwater port. Specifically, upon determining that this facility was the first deepwater port EPA would permit offshore of an ozone nonattainment area, EPA Region 9 analyzed the DPA, including its legislative history, its relationship to the Outer Continental Shelf Lands Act (OCSLA), the historic interrelationship between OCSLA and Section 328(a) of the CAA. Region 9 consulted with Regions 4 and 6 and Office of General Counsel on this permit application, and also on how EPA was interpreting the DPA in Region 6 permitting actions. Region 9 gathered relevant information concerning the two Channel Islands which are part of Ventura District (Anacapa and San Nicholas Islands), and the sources located on these islands. We analyzed the extent to which it might be appropriate to treat this proposed facility as if it were a facility located within the National Park which encompasses Anacapa Island or as if it were part of the naval facility which encompasses San Nicolas Island. We examined the type of sources located on these islands, the location of the islands in comparison to the proposed LNG facility, the likelihood of new major sources being located on these islands, and the reasons why EPA approved Ventura's revision to Ventura District Rule 74.9 to provide an exemption from the rule for engines on San Nicolas Island and Anacapa Island. We also examined the legislative history of Section 328(a) of the CAA to determine the basis for Congress requiring offsets for OCS sources within 25 miles of an onshore nonattainment area. Based upon this research and analysis, EPA determined that Ventura Rule 26 as currently written and approved into the SIP does not treat a deepwater port located on the OCS the same as sources located on Anacapa or

San Nicolas Islands. In April, EPA informed BHP that we had determined that the Ventura District NSR requirements applied, and in particular that the offset requirements of the Ventura District NSR Rule 26 applied. This determination did not negate the need for a PSD permit application.

4. **What steps are being made to ensure that the review of the Cabrillo Port application by Region 9 is being coordinated across other EPA Regional and Headquarters offices?**

On its review of the air permit application and the applicability determination, Region 9 has consulted with both OAQPS and OGC. In addition, Region 9 has been kept informed of Region 6 and Region 4 applications, all of which are proposed for locations with a corresponding onshore areas that are in attainment of national ambient air quality standards (NAAQS).

Although all these LNG facilities will import LNG and subsequently gasify and distribute the gas in the United States, because of differences in the law of the corresponding on shore areas, the facilities are subject to different air permitting requirements. Furthermore, California is unique because it implements the CAA requirements through 35 air districts. These districts have different air quality as well as different air permitting rules which have been incorporated into the California SIP. Therefore, although EPA is coordinating internally, permitting for this facility requires determinations and first time legal interpretations to apply the DPA and CAA to this facility. The Cabrillo Port case has also been more complex than projects in other regions in that the corresponding on shore area is classified as nonattainment for ozone.

In preparing the draft NPDES permit, we intend to coordinate with other EPA Regions and EPA Headquarters regarding the nature of the permit conditions which are imposed.

5. **What effects will the Cabrillo Port review have on other proposed offshore LNG facilities in Region 9 as well as in other EPA regions?**

Each proposed LNG facility in Region 9 will require a separate determination of the applicable air permitting authority and requirements. To date there are two LNG facilities proposed offshore[1] in Region 9:

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[1] There is also a proposed onshore LNG facility at Long Beach, California (SES, Mitsubishi). For the SES Mitsubishi project, the South Coast Air Quality Management District is the permitting authority. EPA has an oversight responsibility to ensure that the Air District implements and enforces its rules.

- Cabrillo Port (BHP Billiton) – about 14 miles offshore of Ventura
- Clearwater Port (Crystal Energy) – about 12 miles offshore of Ventura, and proposing to use an existing platform for part of its operation.

For the Cabrillo Port, we are the air permitting authority and will issue a permit based on the DPA requirements. Furthermore, we are the water permitting authority for both proposed ports, as they are both in federal waters. In addition, the State of California will also be a water permitting authority within state territorial waters, and the Cabrillo Port will need a state water permit.

For the Clearwater Port, since part of the project will be on an offshore platform (Platform Grace), we have been in discussion with the Minerals Management Service (MMS), the authority for permitting construction and operation of offshore platforms under the OCSLA, to understand various agencies' jurisdiction and authorities for this specific project. Ventura District is the delegated air permitting authority under Section 328 of the CAA and our OCS Regulations for the current operations on Platform Grace. We believe that the air permitting of this proposed project should be consistent with Port Cabrillo, specifically with regard to offsetting air emissions.

As other Regions receive applications for deepwater ports, EPA shall continue to coordinate. Region 9's actions on the Cabrillo Port project would probably be of more relevance to Regions which encounter projects to be located offshore of a nonattainment area, but each proposed LNG facility will require an individualized determination of the applicable air permitting authority and requirements.

6. **How has EPA coordinated with the US Coast Guard on this review?**

From the proposal stage of these LNG projects, the Coast Guard and EPA have coordinated their potential activities through meetings, calls and correspondence.[2] EPA

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[2] Staff contacts have been ongoing since mid-2003. A September 23, 2003 letter from Region 9 to the Coast Guard enclosed a list of the elements EPA found to be missing from the initial deepwater port license application, including a discussion of applicable SIP requirements. On September 24, 2003, Coast Guard representatives meet with staff and managers of EPA Region 9 programs to discuss this project in detail. On March 31, 2004, EPA sent the Coast Guard scoping comments. The Coast Guard has been copied on EPA's letters to the Applicant. On May 19, 2004, EPA staff and managers had a conference call with Coast Guard representatives to discuss LNG facility issues, including the issues raised by this application. Recently, on June 10, 2004, we asked the Coast Guard not to re-start its licencing time line until the Applicant provides information concerning offsets.

has communicated its concerns and issues with the air permit application from the initial submittal of the license application to the Coast Guard. This coordination is done by on-going staff and management level contacts, letters to the Coast Guard, and Coast Guard participation in meetings with the applicant. EPA will continue to communicate and coordinate its activities with the Coast Guard.

7. **Describe the process by which EPA is coordinating its review with the Ventura County Air Pollution Control District?**

We have kept Ventura District informed of the status of this application, our determinations, ongoing issues, and technical matters. We have had calls with the Ventura County Air Pollution Control Officer (APCO), permitting manager, staff, and counsel. Ventura District has been copied in our letters to the Applicant. We will continue to have on-going discussions with Ventura District about the issues raised by this permit application. Recently, Ventura District sent us a written response regarding its interpretation of the Ventura rules on issues related to offsetting vessels emissions.

8. **Would potential emission offset requirements apply to only stationary sources in Ventura County?**

Yes. Ventura's new source review rules (Rule 26 with subparts 26-26.11) are part of the California SIP and apply to stationary sources. However, in determining the offset requirements which apply to a port, the Ventura new source review rules may include some marine vessel emissions in the potential to emit of the stationary source, and thus some vessel emissions may be included in offset calculations and impact analysis for stationary sources in Ventura County. We asked Ventura District to provide input on this issue, and have received a written response (see Attachment 1). Ventura District has provided an analysis of the relevant definitions of Rule 26, and the implications for marine vessel emissions being included or excluded from offset calculations. We shall continue to work with the Applicant and Ventura District to assure proper application of Ventura Rule 26 in our permitting process.

Ventura NSR Rule 26.2.B.1 requires offsets based on a calculation prescribed in Rule 26.2.B.2.a where the potential to emit of the stationary source would be greater than or equal to the 5 tons/year for reactive organic compounds (ROC) and NOx, or 15 tons/year for PM10 or SOx. For the proposed Cabrillo Port project, the potential to emit for ROC and NOx (even without considering any vessels emissions) will be subject to the offsets requirements (at a ratio of 1.3/1), but no offsets will be required for PM10 and SOx,

because the potential emissions are below the threshold provided in Rule 26. (see Attachment 2).

9. **How is EPA considering flexibility in implementing the air permit requirements to apply to non-stationary sources or to other projects to meet Clean Air Act objectives?**

We are only permitting the stationary source. Non-stationary sources associated with this project (such as cargo vessels) are not required to obtain PSD or NSR permits. As discussed above, Rule 26 does include certain vessel emissions in the calculations of offsets required from the stationary source. First, we have confirmed Ventura District's interpretation of these offset requirements, so that EPA does not require more offsets than Ventura District would require of an onshore source. Second, EPA Region 9 will work with the applicant and the relevant state authorities to utilize existing flexibility in the applicable law and regulations to allow the applicant to be innovative in obtaining the offsets which are required for the project.

10. **In its review of the proposed Cabrillo Port project, how does the Agency anticipate responding to Executive Order #13212: Actions to Expedite Energy-Related Projects?**

Executive Order #13212 requires that, for energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. Executive Order #13212 further states that agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

The proposed LNG projects have received high priority within EPA, and will continue to be a high priority. Indeed, we have re-directed our technical and legal staff resources to this project. We have been working hard to expedite the air permitting process by addressing and resolving the plethora of issues of first impression which have arisen during this permitting process. We have also worked to ensure a sound technical basis for both our air permit and water permit decisions. For example, the initial air modeling done by the applicant raised issues concerning the appropriate model and data input to utilize for the proposed project. Region 9 worked with the applicant's consultant to ensure that the application submitted to us had the appropriate and correct technical information. We will continue to work with the project applicant and state and federal agencies.

EPA intends to use the Coast Guard's NEPA document as the basis for issuing our Record of Decision or Finding of No Significant Impact for the NPDES permit (which

requires EPA's NEPA compliance concurrence). This approach is consistent with the MOU, CEQ regulations, and contributes to a streamlined environmental review process.

EPA has also met with the Coast Guard to discuss the strict time lines established by the DPA that apply to the Cabrillo Port project. We understand that substantive environmental issues, including matters relating to the issuance of permits, should be fully analyzed during the NEPA process.

EPA's submittal of detailed scoping comments to the Coast Guard, and our willingness to review an administrative Draft NEPA document (prior to the public comment period) also demonstrate our commitment to streamlining and expediting the environmental review process for the Cabrillo Port project.

11. **Description of the actions to be taken or the decisions to be made by EPA.**

Air Permit for Authority to Construct (ATC): We have reviewed the PSD application. We have also determined that the proposed deepwater port is subject to the Ventura SIP rules, including NSR rules. We have received Ventura District's interpretation of vessels emissions. We are now able to determine the amount of offsets which will be needed for this project.

We will be working with the Applicant on any unresolved issues. After our April letter we anticipated that the Applicant would work with us on the offset package and to complete the application. After further recent communications with the Applicant, it appears that BHP is willing to start discussions with us and the Ventura District on various potential options for generating credits and securing offsets. Once the amount of offsets necessary for this project is clearly understood by all parties, and the sources of qualifying effsets are determined, we hope to promptly receive a supplemental offset package from the Applicant. If the supplemental information is adequately complete, the Air Permits Office will need about two months to prepare an ATC permit. Once the draft permit is published, there is a thirty day period for public comment. After the close of the public comment period, Region 9 Air Permits Office will respond to comments and determine if it is appropriate to issue a final permit. When a permit is issued and uncontested, it becomes effective in thirty days. However, permits can also be appealed to the Environmental Appeals Board (EAB) within EPA. The EAB would follow its procedures for determining if any of the issues raised require review or changes to the permit.

Title V Operating Permit: An operating permit can be issued at the same time as an ATC, or separately. Because operating permits have annual requirements (such as payment of fees and certification of compliance) which might not make sense if there is a

significant lag time between issuance of an ATC (or preconstruction permit) and final construction and operation of a facility, the operating permit application is often submitted later and the operating permit issued after operations have begun (40 C.F.R. § 71.5(a)(1)). Operating permits contain the requirements found in the ATC (and any other applicable requirements and title V requirements such as monitoring, recordkeeping and reporting requirements), but operating permits must be renewed every five years. Region 9 has been proceeding with the understanding that the air permit application is for an ATC permit, and that an operating permit will be issued separately.

NPDES Permit: To operate this facility, BHP will need a National Pollutant Discharge Elimination System (NPDES) permit for each discharge. See 33 U.S.C. §§ 1311 and 1342. Discharge permits in federal waters will be issued by EPA, Region 9 while permits within the state's territorial seas (3 miles from shore) will be issued by the state. To obtain these permits, BHP must submit complete applications to EPA or the state as described in the Clean Water Act and 40 C.F.R. Part 122. The applications may be submitted as stand-alone documents, or may be appended to the DPA. We have received the information we requested from BHP and will now proceed to prepare a draft NPDES permit.

The issuance of the NPDES permit also triggers NEPA compliance requirements for EPA. We intend to rely on the EIS prepared by the Coast Guard to issue a Record of Decision or Finding of No Significant Impact, and thereby meet EPA's responsibilities pursuant to NEPA and 40 C.F.R. Part 6. Because we have to comply with NEPA, issuance of our final NPDES permit will depend on completion of the NEPA process. Accordingly, we will need to coordinate the proposal and issuance of the NPDES permit with the EIS preparation and finalization process.

NEPA Review: In addition to EPA's NEPA compliance responsibilities triggered by the issuance of the NPDES permit, we will also review and comment in writing on the EIS when it is released for public comment. Our written comments will include an alphanumeric rating that addresses the environmental impacts of the project, and the adequacy of the information in the NEPA document.

License Notification at End of Public Comment Period: The DPA includes a determination by EPA whether issuance of a license to Cabrillo Port would not conform to the CAA, the Federal Water Pollution Control Act, as amended, or the Marine Protection, Research and Sanctuaries Act. If issuance of the license would not conform to these laws, the Administrator of the Environmental Protection Agency is to inform the Secretary of Transportation within 45 days of the last public hearing on a proposed license for a designated application area. 33 U.S.C. § 1503(c)(6). At this time, EPA anticipates that all currently outstanding issues can be resolved in the near future. We will

continue to place a high priority on working with the project applicant and other federal and state agencies so that issuance of a license can conform to the aforementioned laws.

12. **Identify Headquarters and Regional office staff contacts**

Administrator's Office: Sue Stendebach
OGC: Elliot Zenick (air issues), Marilyn Kuray (NEPA)
OAQPS: Bill Harnett, Mike Sewell
OAR: Dennis Leaf
HQ/NEPA: Ken Mittelholtz
Region 9:
Air Division: Amy Zimpfer
Air Permits Office: Gerardo Rios, Nahid Zoueshtiagh
Office of Federal Activities (NEPA): Lisa Hanf, David Tomsovic
Water Division: Doug Eberhardt, Eugene Bromley
ORC: Margaret Alkon (air issues); Marcela VonVacano (water issues)

13. **Proposed Schedule for Actions or decisions.**

Air Permit: Air Permit: On June 18, 2004, EPA received Ventura District's interpretation of Rule 26 with respect to including various vessels emissions in the offset calculations. With this interpretation, we are now in a position to begin determining the offsets that will be needed for this project. As of early July, 2004, the Region 9 Air Division was still waiting for Information from the Applicant on how it plans to offset emissions. That information will supplement the initial application, which is not complete at this time, and will enable us to proceed with drafting a proposed permit.

Once the amount of offsets necessary for this project is clearly understood by all parties, we hope to promptly receive a supplemental offset package from the Applicant. If the supplemental information is adequately complete, the Air Permits Office will need about two months to prepare a permit (Authority to Construct). The draft permit is published, and there is a thirty day period for public comment. After the close of the public comment period, the Region 9 Air Permits Office will respond to comments and determine if it is appropriate to issue a final permit. When a permit is issued and uncontested, it become effective in thirty days. However, permits can also be appealed to the Environmental Appeals Board (EAB) within EPA. The EAB would follow its procedures for determining if any of the issues raised require review or changes to the permit.

Water Permit: We estimate that the draft NPDES permit will be ready by late summer, 2004 and will be coordinated with the draft EIS. It will then be proposed for a 30 day (at

a minimum) public comment period. After the close of the public comment period, the Region 9 Water Permitting Office will respond to comments. However, the final permit cannot be issued until after completion of the NEPA process. The permit could be effective 30 days after issuance. NPDES permits, however, can also be appealed to the Environmental Appeals Board (EAB) within EPA by anyone who commented on the permit during the public comment period (40 C.F.R. 124.19).

NEPA Process: The Coast Guard has scheduled 175 days for draft EIS preparation and review. Within that time frame, we anticipate having 2 weeks to review the Coast Guard's administrative Draft EIS prior to the public comment period. The minimum public comment period established by CEQ for a Draft EIS is 45 days (40 C.F.R. 1506.10). EPA will provide formal written comments, including a rating for the document, to the Coast Guard during this time frame. The Coast Guard has scheduled 109 days for final EIS preparation and interagency review. When the Coast Guard releases the Final EIS for the 30-day "wait period," EPA will review the document and provide written comments if we identify unresolved environmental issues that we raised on the Draft EIS.

Coast Guard is the federal lead agency for the NEPA/CEQA process and as part of that process Coast Guard will be the lead agency for consultations with the Fish and Wildlife Service and NOAA's National Marine Fisheries Service pursuant to the Endangered Species Act and Magnuson Fisheries Act. In issuing our air and water permits, EPA shall be utilizing these Coast Guard consultations, and thus we do not plan to finalize air or water permits until these necessary consultations are completed.

EPA Administrator Notice to Secretary of Transportation: After the last public hearing, the Coast Guard has scheduled 90 days until the last day for a decision on the license. Within that time period, there is a 44 - day agency comment period. If issuance of the license would not conform to the CAA, the Federal Water Pollution Control Act, as amended, or the Marine Protection, Research and Sanctuaries Act, the Administrator of the Environmental Protection Agency is to inform the Secretary of Transportation within 45 days of the last public hearing.

14. **List any unresolved internal issues.**

Ventura District has responded to us regarding its interpretation of requirements for vessels emissions. We are now able to determine the offsets which will be needed for this project pursuant to the DPA and Rule Ventura Rule 26.

Whether issuance of a license to the Cabrillo Port would conform to the Marine Protection, Research and Sanctuaries Act: Internal analysis has begun but not completed.

Also, the NEPA and CEQA process should include analysis relevant to this determination (for example, impacts on the Channel Islands National Marine Sanctuary).

15. **List any unresolved external issues.**

Air Permit: Applicant's position on requiring offsets. Early in June 2004, we received a letter from Hollister & Brace on behalf of BHP in response to our April 2004 applicability determination. Hollister & Brace basically disagrees with our determination on applicability of Ventura NSR to the proposed deepwater port. In addition it argues that the vessels emissions must be excluded. We have responded to this letter and have clarified our position with regard to applicability and offset requirements (see Attachment 3).

Conformity (CAA issue)
The Applicant has argued that a conformity analysis is not required. The Environmental Impact Statement (NEPA document) will address the conformity of this project. We understand that the onshore activities related to this project include temporary activities associated with construction. The land connection of the pipeline requires a land use permit, and it appears that no air permit will be required from the District. Presently a joint NEPA and CEQA (California Environmental Quality Analysis) is being prepared for this project, and both documents will address the conformity.

Water Permit: The key issues are:
(1) Receiving confirmation from the State of California that it has received a complete NPDES permit from BHP for discharges within 3 miles off the California coast. BHP has stated that it will provide the necessary information to the State in July.
(2) Resolving and clarifying issues concerning compliance with the Coastal Zone Management Act (CZMA) which may involve requesting a consistency determination from the California Coastal Commission (CCC). Resolution of these issues must occur before issuing the final NPDES permit. However, the discharges would occur a considerable distance from State waters (about 11 miles). Further, the discharges appear to be of limited environmental significance. In these circumstances, we may be able to argue that there would be no effect on the coastal zone, and that no formal consistency determination would be required from the CCC. Relatively minor discharges have been handled in this manner in the past. For such discharges, we nevertheless asked for CCC staff concurrence on our conclusion; this required about a month but did resolve the CZMA issue relatively quickly. If a formal consistency determination were to be required from the CCC itself, up to six months could be required for the CCC to review and act upon the consistency certification.

16. **List any other organizations that have a role in the decision process, affecting the timing or completion of your decision or action.**

BHP (project applicant)	To issue draft air permits, EPA must receive all necessary information from the project applicant. The most significant missing information concerns offset of air emissions. Receipt of this information (or failure by BHP to provide this information) will affect the timing of EPA's air permitting action.
Ventura District	To issue a draft air permit to construct, EPA will apply the Ventura District SIP rules. EPA will be consulting with Ventura District on their interpretation of their rules. Consultation with the District has taken time but future consultation should not delay EPA's air permitting action.
Federal Land Manager (FLM) U.S. Forest Service	Consultation on possibility of impact on Class I area. The FLM role in the decision process is not expected to delay EPA's air permitting action.

In addition to the above, agencies which may have a particular interest in EPA's draft air permit include: the California Air Resources Board; Santa Barbara APCD; South Coast APCD; and Channel Islands National Park.

California Coastal Commission	The California Coastal Commission may have to decide on a consistency determination pursuant to the CZMA for the NPDES permit (see 15 above).
Fish and Wildlife Service and National Marine Fisheries Service	ESA and Magnuson Act require coordination with NMFS and FWS. (Although Coast Guard will be lead agency)
California Regional Water Quality Board	The RWQB will have to issue an NDPES permit for discharges from BHP's facility into state waters. It will require a complete application and may raise its own concerns regarding the impacts on waters of the State.

US Coast Guard	The Coast Guard is the lead agency for the NEPA process, and for processing the deepwater port license. The Coast Guard has a key role in the NEPA process, and can affect the timing or completion of all EPA actions on this project.
Channel Islands National Marine Sanctuary (CINMS)	Section 1503(c)(6) of the DPA includes a determination by EPA whether issuance of a license to Cabrillo Port would conform to the Marine Protection, Research and Sanctuaries Act (MPRSA). The Channel Islands National Marine Sanctuary was established pursuant to Title III of MPRSA. Prohibited activities in the CINMS include the discharge or deposit of any material or other matter in the CINMS. EPA may need to consult with CINMS to evaluate Cabrillo Port's compliance with MPRSA.
The Governor of California	The Governor of California has a veto power over this project under the DPA.
Other Public Interest Groups	

In addition to the above, a variety of federal and state agencies have a role in the licensing of the deepwater port. EPA water and air permits and the Coast Guard license process all involve public comment, and EPA expects a variety of external parties (such as environmental groups, public health advocates, local government entities and members of the local community) to participate in this public process.

Attachments:

1. Ventura District's June 18, 2004 letter to EPA
2. Ventura Rule 26.2
3. EPA's June 29, 2004, letter to BHP

June 18, 2004

Gerardo Rios, Chief
Permits Office (AIR-3)
EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Subject: Ventura County Air Pollution Control District (VCAPCD) Rule 26, New Source Review Interpretation

Dear Mr. Rios:

In your letter dated May 27, 2004, you asked for the Ventura County Air Pollution Control District's (VCAPCD or District) help in determining how to interpret and apply the offset requirements of VCAPCD Rule 26.2 in relation to the proposed BHP Billiton deepwater liquefied natural gas (LNG) port, the Cabrillo Port Project. EPA Region IX has made the initial determination that District regulations are the relevant laws of the nearest adjacent coastal state pursuant to Deepwater Port Act of 1974, as amended (33 U.S.C. § 1501 et seq.) and that District Rule 26.2 emission offset requirements are also applicable to the Cabrillo Port Project. You asked specifically about the application of VCAPCD Rule 26 offset requirement as well as the definition of "emissions unit"; "stationary source"; "common operations"; "cargo carriers"; and "California coastal waters" to the Cabrillo Port Project, which is designed to lie approximately 14 miles offshore of Ventura County.

Rule 26 Definitions – General Background

Before answering your specific questions, it is important that you become aware of the District's interpretation of some basic new source review (NSR) permitting terminology. A "stationary source" (as defined in Rules 2 and 26.1(27)) is a collection of emissions units that require an Authority to Construct and Permit to Operate[1], emissions units that are exempt from permit pursuant to Rule 23, and non-emissions units. The definition of "stationary source" specifically includes the term "cargo carriers" and incorporates certain emissions from cargo carriers into the permitted stationary source's emissions. Cargo carriers include marine vessels and locomotives, both of which are emissions units exempt from permit pursuant to Rule 23.

The current District definition of "stationary source," which also includes the terms/definitions of "common operations" and "California coastal waters," was adopted by the District Board on January 10, 1984. These terms/definitions are based on a model new source review rule and guidance developed by a committee of California Air

[1] See District Rules 12, 13 and 14.

Pollution Control Officers (CAPCOA) and the Air Resources Board (ARB) and published by the Air Resources Board in a report entitled Status Report on California's Permit Program For Stationary Sources dated August 26, 1981.[2] Since the District did not maintain extensive rule files in 1984 when it added this language to its NSR rule, it does not have any legislative history on this rule adoption that might help further explain it. The 1981 CAPCOA/ARB report and the model rule provide limited insight into the reasons for including "cargo carriers" in the definition of "stationary source" other than to cite the air pollution control district's general authority to adopt appropriate regulations to protect air quality.

Given this slight handicap, the District understands and applies this definition of stationary source, which includes cargo carriers, to require that certain marine vessel and locomotive emissions be included in or considered a part of the corresponding stationary source's emissions subject to the offset requirement. The District finds no evidence or intent to require marine vessels and locomotives to be equipped with best available control technology. The CAPCOA/ARB NSR model rule at Section 401, Best Available Control Technology Requirements, and Section 402, General Offset Requirement, supports the District's understanding and application of the term stationary source in relation to the offset requirement.

The definition of "common operations"[3] in the District definition of stationary source states that the "emissions within District boundaries and California coastal waters from cargo carriers associated with the stationary source shall be considered emissions from the stationary source." The definition of "cargo carriers" has a more detailed explanation of what emissions from cargo carriers are to be considered a part of the stationary source emissions.[4]

The District has interpreted the more detailed provisions in the definition of "cargo carriers" as limiting the more general provisions in the definition of "common operations." This interpretation is supported by the fact that the language in District Rule 26 is almost identical to the language in the CAPCOA/ARB model rule definitions for Cargo Carriers (Section 306) and Stationary Source (Section 322), which are attached as Exhibit 1 to this letter. The CAPCOA/ARB model rule, however, explicitly states in

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[2] The main purpose of this report is "to incorporate into NSR rules a PSD program to meet California needs and provide a common framework for siting sources anywhere in the State. . . . [and to be] a prototype for the development of new source siting rules anywhere in the state."

[3] "Common operations" includes operations which are related through dependent processes, storage, or transportation of the same or similar products or raw material. The emissions within District boundaries and California coastal waters from cargo carriers associated with the stationary source shall be considered emissions from the stationary source.

[4] "Cargo Carriers" includes trains dedicated to a specific source, and marine vessels. The emissions from all marine vessels which load or unload at the source shall be considered as emissions from the stationary source while such vessels are operating in District waters and in California coastal waters adjacent to the District. The emissions from vessels shall include reactive organic compound vapors that are displaced into the atmosphere; fugitive emissions; combustion emissions in District waters; and emissions from the loading and unloading of cargo. The emissions from all trains dedicated to a specified stationary source, while operating in the District, including directly emitted and fugitive emissions, shall be considered as emissions from the stationary source."

Section 322 that cargo carrier emissions within District boundaries and California coastal waters associated with the stationary source shall be considered emissions from the stationary source "to the extent provided in Section 306."

The District Rule 26.1(27) definition of cargo carrier reads in part: "The emissions from all marine vessels which load or unload at the source shall be considered as emissions from the stationary source while such vessels are operating in District waters and in California coastal waters adjacent to the District. The emissions from vessels shall include reactive organic compound vapors that are displaced into the atmosphere; fugitive emissions; **combustion emissions in District waters**; and emissions from the loading and unloading of cargo." Emphasis added.

Although the term "District waters" is not defined, the District interprets it to mean waters within the jurisdiction of the District: lakes, rivers, harbors, or internal waters,[5] and the Pacific Ocean within three miles of the mean high tide line pursuant to California Constitution, Article 3, Section 2, Government Code Section 110 and concomitant case law. The phrase "California coastal waters adjacent to the District" is not specifically defined, but the District interprets this phrase to mean the California coastal waters as set forth in Rule 26.1 (27) adjacent to or corresponding to the landward boundaries of the District as set forth in Government Code Section 23156. The term "marine vessels" is not defined in District Rule 26.1 but California Health & Safety Code Section 39037.1 defines a "marine vessel" as including tugboats, tankers (which would include LNG tankers), freighters, passenger ships, barges, or other ships, boats or watercraft not used primarily for recreation (which would include crew boats and supply boats).

Given the District's understanding of BHP Billiton's proposed Cabrillo Port deepwater LNG facility and the foregoing EPA SIP-approved definitions, the District would consider certain emissions from supply boats and LNG tankers as marine vessel emissions that load or unload cargo at the stationary source for emission offset purposes.

Answers to Specific Questions about Rule 26

The following are answers to your specific questions.

A.(1) "Would Rule 26 require offsets for emissions from vessels docked at the stationary source arising from the loading and unloading of cargo?"

Yes, any emissions resulting from loading and unloading of LNG tankers or supply boats at the stationary source/Cabrillo Port would be required to be offset by Rule 26.

A.(2) "Would Rule 26 require offsets for emissions from vessels docked at the facility arising from any other activities such as hoteling?"

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[5] Internal waters equals "any natural or artificial body of stream of water within the territorial limits of a country [or subdivision thereof], such as a bay, gulf, river mouth, creek, harbor, port or canal." Black's Law Dictionary, 7th ed., p. 821.

Rule 26 would not require hoteling emissions to be offset since the District understands that LNG tanker hoteling will take place outside of District waters. However, any fugitive emissions or reactive organic compound emissions that are displaced into the atmosphere from the supply boats or LNG tankers while docked at the stationary source/floating storage and regasification unit would need to be offset.

(B) "Would emissions from marine vessels while in transit in California coastal waters need to be offset if the marine vessels will ultimately load or unload at the stationary source?"

No, combustion emissions, which include both propulsion and hoteling emissions, from supply boats or LNG tankers while in California coastal waters (which extend well beyond 3 miles from the shoreline, see Exhibit 1, Section 305), but outside District waters, (i.e., outside 3 miles from the shoreline) would not need to be offset pursuant to Rule 26. However, any fugitive emissions or reactive organic compound emissions that are displaced into the atmosphere from the supply boats or LNG tankers dedicated to a stationary source while operating in California coastal waters adjacent to the District would need to be offset. Any combustion emissions from the supply boats or LNG tankers while operating in District waters (i.e., within 3 miles of the shoreline) would also need to be offset.

Although the District does not believe that Rule 26 requires all combustion emissions from the marine vessels to be offset, these emissions should be addressed as part of the environmental review process.

Sincerely,

Michael Villegas
Air Pollution Control Officer

Attachment

c: Mark Prescott, U.S. Coast Guard
Steve Meheen, BHP Billiton LNG International Inc.
Tom Umenhofer, Entrix, Inc.
Kevin Wright, Entrix, Inc.
Amy Zimpfer, EPA Region IX
David Tomsovic, EPA Region IX
Margaret Alkon, EPA Region IX
Robert N. Kwong, County Counsel

VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT

RULE 26.2 -- NEW SOURCE REVIEW – REQUIREMENTS

(Adopted 10/22/91) (Revised 2/13/96, 1/13/98, 5/14/02)

A. Best Available Control Technology

The Air Pollution Control Officer (APCO) shall deny an applicant an Authority to Construct for any new, replacement, modified, or relocated emissions unit which would have a potential to emit any of the pollutants specified in Table A-1, unless the emissions unit is equipped with the current Best Available Control Technology for such pollutants.

Table A-1.

Reactive Organic Compounds (ROC)
Nitrogen Oxides (NOx)
Particulate Matter (PM10)
Sulfur Oxides (SOx)

B. Offsets

1. The APCO shall deny an applicant an Authority to Construct for any new, replacement, modified or relocated emissions unit with an emission increase of any of the pollutants specified in Table B-1, and where the potential to emit of the stationary source would be greater than or equal to the limits specified in Table B-1, unless offsets are provided for any emission increases of such pollutants from the new, replaced, modified, or relocated emissions unit.

Table B-1.

ROC	5.0 ton/yr
NOx	5.0 ton/yr
PM10	15.0 ton/yr
SOx	15.0 ton/yr

2. An applicant required to provide offsets shall use emission reduction credits to provide offsets. The use of emission reduction credits to offset an emission increase shall be restricted to only those emission reduction credits which are not subject to reduction pursuant to Rules 26.4.D.1 and 26.4.D.2 during the reasonably expected duration of such emission increase.

   a. For any stationary source where the potential to emit would be equal to or greater than the limits specified in Table B-2, offsets for ROC and NOx shall be provided at a tradeoff ratio of 1.3.

   b. For any stationary source where the potential to emit would be less than the limits specified in Table B-2, offsets for ROC and NOx shall be provided as follows:

1) For a stationary source with a pre-project potential to emit of equal to or greater than 5 tons per year of either NOx or ROC, offsets for any emission increase of such pollutant shall be provided at a tradeoff ratio of 1.1.

2) For a stationary source with a pre-project potential to emit of less than 5 tons per year of either NOx or ROC, offsets for any emission increase of such pollutant shall be provided at a tradeoff ratio of 1.1. The emission increase shall be calculated as follows:

$$A = B - (C \times D)$$

where:
A = Emission Increase (tons/yr)
B = Post-project potential to emit of such pollutant at the stationary source (tons/yr)
C = The number of years since initial permit issuance (but not to exceed 5)
D = Distribution Rate (1 ton per year per year)

c. Offsets for PM10 and SOx shall be provided at a tradeoff ratio of 1.1.

Table B-2.

ROC	25.0 ton/yr
NOx	25.0 ton/yr

d. For any new major source and any major modification, offsets for ROC and NOx shall be provided at a tradeoff ratio of 1.3. All emission reduction credits provided by the applicant for a new major source or a major modification shall be surplus at the time of use as determined pursuant to Rule 26.11.B except as provided in Rule 26.11.C.6.

3. An applicant for an essential public service who is required to provide offsets may use community emission reduction credits from the essential public service account of the community bank to provide offsets for ROC and NOx if the following provisions are satisfied:

a. The applicant is proposing to provide some or all of the required offsets by using any emission reduction credits held by the applicant.

b. The potential to emit of the stationary source will not exceed the limits specified in Table B-2.

If no credits are available from the essential public service account of the community bank, the applicant shall provide offsets using emission reduction credits. All ROC and NOx emission reduction credits and community emission reduction credits

provided as offsets pursuant to this section shall be provided at a tradeoff ratio of 1.0.

4. For any applicant who is using emission reduction credits to provide offsets, the quarterly profile of the emission reduction credits and the quarterly profile of the emission increase for which the applicant is proposing to utilize the emission reduction credits as offsets shall satisfy the profile check for offsets as calculated pursuant to Rule 26.6.F.

C. Protection of Ambient Air Quality Standards and Ambient Air Increments

The APCO shall deny an applicant an Authority to Construct for any new, replacement, modified or relocated emissions unit which would cause the violation of any ambient air quality standard or the violation of any ambient air increment as defined in 40 CFR 51.166(c). In making this determination the APCO shall take into account any offsets which were provided for the purpose of mitigating the emission increase.

D. Certification of Statewide Compliance

The APCO shall deny an application for an Authority to Construct for any new major source or major modification, unless the applicant certifies that all major sources, as defined in their specific nonattainment area, which are located in California and which are owned or operated by the applicant, or by any entity controlling, controlled by or under common control with such applicant, are in compliance or on a schedule for compliance with all applicable emission limitations and standards.

E. Analysis of Alternatives

The APCO shall deny an application for an Authority to Construct for any new major source or major modification unless the applicant provides an analysis as required by Section 173(a)(5) of the federal Clean Air Act, of alternative sites, sizes, production processes, and environmental control techniques for the proposed source demonstrating that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

June 29, 2004

Steve R. Meheen
Project Manager
BHP Billiton LNG International Inc.
300 Esplanade Drive, Suite 1800
Oxnard, California 93036

Re: Air Permit Application for Cabrillo Port
BHP Billiton Deepwater Port Project Off Shore Ventura, California

Dear Mr. Meheen:

We received the letter from Hollister & Brace dated June 1, 2004, and written on behalf of BHP Billiton LNG International Inc. ("BHP"). Thank you for this response to our April 5, 2004, letter regarding the applicability of the federally-approved Ventura Air Pollution Control District ("District") rules to the proposed deepwater port. We have considered the arguments made concerning the Outer Continental Shelf Lands Act of 1953, 43 U. S. C. § 1331 *et seq.*, ("OCSLA"), the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.* ("DPA"), and the Clean Air Act, 44 U. S. C. § 7401, *et seq.*, ("CAA"). Our position regarding the applicability of the District rules has not changed, but we are clarifying in this letter our applicability determination and the remaining unresolved issues. We will continue to work with BHP to resolve the remaining air permitting issues in a timely fashion.

A. Cabrillo Port Air Permitting Background

BHP is proposing to construct Cabrillo Port, which will consist of a floating storage and regasification unit ("FSRU") connected to a new subsea pipeline that will come ashore at Ormond Beach, near Oxnard. This facility would be located in the Pacific Ocean, approximately 14 miles offshore of Ventura County, California, between the cities of Oxnard and Port Hueneme. This proposed FSRU facility is a deepwater port, regulated under the DPA. BHP submitted an application to the Coast Guard for a deepwater port license, and an application to EPA for necessary air permits.

On December 31, 2003, BHP submitted a PSD application. On January 30, 2004, EPA informed BHP that the air permit application was administratively complete for prevention of significant deterioration ("PSD") purposes, but that we might need clarifying information on one

or more parts of the application. That letter highlighted one major area where further information might be required, as it stated that we were looking at the applicability of Ventura District new source review ("NSR") rules to this project, and that we would inform BHP of our determinations concerning NSR at a later time.

In an April 5, 2004 letter, EPA informed BHP that we had determined that the Ventura District NSR requirements applied, and in particular that the offset requirements of the Ventura District NSR Rule 26 applied. In addition to being a local requirement, Rule 26 has been approved by EPA into the Ventura District portion of the California State Implementation Plan ("SIP"). We requested from BHP an analysis of offset requirements in accordance with Rule 26. In its April 5 letter, EPA applied the DPA. EPA did not apply the air rules for facilities governed by the OCSLA, which can be found at 40 C.F.R. Part 55. In determining the applicable adjacent coastal state rules, we applied Section 1502 of the DPA. After determining that the Ventura District rules applied, we were confronted with issues which had not yet arisen in other air permits for deepwater ports.[1] Rule 26 requires offsets, and therefore we conducted a further analysis. In that analysis, we looked to Section 328 of the Clean Air Act to compare the extent to which application of the offset requirement of the Ventura NSR rule would be consistent with how the Clean Air Act treats other sources on the outer continental shelf located in the same area, but we agree that Section 328 is not directly applicable to deepwater ports.

On May 20, 2004, we met with representatives from BHP and BHP's consultant, Entrix, with the Coast Guard participating in the meeting via conference call. The May 20th meeting focused primarily on the applicability of the District NSR rule to this proposed deepwater port. We also discussed coordinating the air permit with the deepwater port license time line. EPA explained that we must determine how to apply District Rule 26 in a manner which is consistent with the Deepwater Port Act and that we were still examining the question of what marine vessel emissions, if any, are attributed to the source and require offsets under Rule 26 and whether such attribution would be consistent with the Deepwater Port Act. At the May 20, 2004 meeting, we learned that BHP does not agree with our determination that Rule 26 applies and that offsets are required.

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[1]EPA has also been permitting LNG deepwater port facilities in the Gulf of Mexico. EPA Region 6 has issued a final permit for the Port Pelican deepwater port facility, to be located 37 miles offshore of Vermilion Parish, Louisiana. EPA Region 6 has also issued a permit for the El Paso Energy Bridge facility to be located approximately 116 miles off the coast of Louisiana. Louisiana is not divided into Air Pollution Control Districts which each adopt air pollution control regulations (as is the case in California), and the relevant onshore areas are attainment for these projects. In determining the applicable requirements for the air permits for these deepwater ports, EPA Region 6 looked to the Deepwater Port Act and applied both Clean Air Act Title I and Louisiana SIP rules approved under 40 C.F.R. Part 51.

During the above time period, EPA and the District were informally discussing this project and the application of District regulations. In a letter dated May 27, 2004, we requested that the District provide to us its written interpretation of how the applicable District Rules attribute vessel emissions to a stationary source. In a letter dated June 10, 2004, we informed the Coast Guard that EPA considers BHP's December 2003 application incomplete for the purposes of meeting the Ventura NSR requirements concerning offsets of air emissions, and we asked the Coast Guard to not restart the time line for processing the license until BHP has provided EPA with an analysis of how the project would meet the offset requirements of District Rule 26.[2] In a letter dated June 18, 2004, the District provided to EPA their interpretation of how the offset requirements of Rule 26 are applied.

B. When Enacting the Deepwater Port Act, Congress Understood The Role of State Air Quality Laws, and That The Clean Air Act Incorporates and Relies upon State Regulations

Hollister & Brace cite section 1518(b) of the DPA, Rodrigue v. Aetna Cas. & Sur. Co (1969) 395 U.S. 352, and argue that when Congress enacted the DPA in 1974[3] Congress intended to mirror section 1333 of OCSLA. Hollister & Brace conclude that if existing federal law or regulations cover a particular subject matter, then no state law applies. EPA agrees that state law does not apply to a deepwater port under section 1518(b) of the DPA if federal law has preempted the state law or if state law is otherwise inconsistent with federal law. However, rules approved into the SIP are more than simply consistent with the Clean Air Act: It is well-established that once a SIP is approved by EPA, it becomes federal law.[4] We also believe that requiring offsets in this case is not inconsistent with the Clean Air Act or the Deepwater Port Act.

When Congress enacted the OCSLA in 1953 (67 Stat. 462), the Clean Air Act did not yet exist, but Congress was concerned about worker safety and gaps in federal law in areas

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[2]In a letter to BHP dated April 6, 2004, the Coast Guard suspended the time line for processing the license in order to obtain additional information concerning the onshore pipeline.

[3] The Deepwater Port Act was enacted Jan. 3, 1975. See P.L. 93-627, 88 Stat. 2127.

[4] United States v. General Motors Corp., 876 F.2d 1060, 1063 (1st Cir. 1989), aff'd, 496 U.S. 530, 110 L. Ed. 2d 480, 110 S. Ct. 2528 (1990). See also Trustees for Alaska v. Fink, 17 F.3d 1209, 1210 n.3 (9th Cir. 1994) ("Having 'the force and effect of federal law,' the EPA-approved and promulgated Alaska SIP is enforceable in federal courts.")(quoting Union Electric Co. v. E.P.A., 515 F.2d 206, 211 & n.17 (8th Cir. 1975), *aff'd*, 427 U.S. 246, 49 L. Ed. 2d 474, 96 S. Ct. 2518 (1976)).

traditionally left to state jurisdiction.[5] In Rodrigue v. Aetna Cas. & Sur. Co 395 U.S. 352 (1969), the Supreme Court analyzed section 1333 of the OCSLA, and held that the Death on the High Seas Act was inapplicable to artificial island drilling rigs, and as a result reversed lower court decisions which had found state law inapplicable. The Court found that Congress adopted the principle that federal law should prevail, and that state law should be applied only as federal law and then only when no inconsistent federal law applied. Rodrigue, 395 U.S. at 358. The Court found that the legislative history of the OCSLA made it clear that these structures were to be treated as islands or as federal enclaves within a landlocked state, not as vessels. Rodrigue, 395 U.S. at 361. The court stated that there was no obstacle to the application of state law by incorporation as federal law through the OCSLA. Rodrigue, 395 U.S. at 366. When Congress enacted the DPA in January, 1975, Congress understood how the Supreme Court had interpreted the OCSLA, and the conclusion that state law could be incorporated as federal law and applied to sources on the outer continental shelf.

In enacting the DPA, Congress also knew the federal structure of the Clean Air Act. Since its inception in 1955, the Clean Air Act has been designed to rely heavily upon state laws and regulations.[6] The CAA does ***not*** preempt state authority to regulate stationary sources of air pollution. The modern CAA first took shape in 1970, when Congress expanded federal responsibilities.[7] Despite this expanded federal role, state regulation remained a key component of the Act. Section 107 states that each State shall have the primary responsibility for assuring air quality within the entire geographic area compromising such State. See 42 U.S.C. §7407(a).

In enacting the DPA, Congress also knew that states might enact state plan provisions which imposed requirements on new sources for purposes of the Clean Air Act. Section 110 of the CAA requires that each state adopt a plan which provides for the implementation, maintenance, and enforcement of the national ambient air quality standards (the state

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[5]The OCSLA specifically cites the Longshoremen's and Harbor Workers' Compensation Act, the National Labor Relations Act. See subsections (b) and (c) of OCSLA section 4, 43 U.S.C. § 1333(1)(b) and (c) (2004). Congress was not so specific in the Deepwater Port Act. Cf. 33 U.S.C. § 1518.

[6]The initial Clean Air Act merely authorized the Surgeon General to conduct investigations, surveys, studies and research on air pollution and to make the results available to state and local government air pollution control agencies. 69 Stat. 322.

[7]The 1970 Act authorized the EPA Administrator to issue air quality criteria for air pollutants and information on air pollution control techniques (Section 108); establish national primary and secondary ambient air quality standards (Section 109); publish standards of performance for new stationary sources (Section 111); and publish national emissions standards for hazardous air pollutants (Section 112). The 1970 Act also contained provisions for federal enforcement (Section 113) and citizen suits (Section 304); as well as authority for EPA to obtain information, require recordkeeping, and conduct inspections (Section 114).

implementation plan, or "SIP"). Section 110 of the 1970 Act stated that the EPA Administrator was to approve a SIP if he determined, amongst other criteria, that the plan included a procedure for review (prior to construction or modification) of the location of new sources to which a standard of performance would apply.[8] See Section 110(a)(2)(D) of the Clean Air Act amended Dec. 31, 1970, P.L. 91-604, 84 Stat. 1679. This procedure was to provide for adequate authority to prevent the construction or modification of any new source which the State determined would prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard. It also required that the owner or operator submit such information as necessary for the State to make the determination. See Section 110(a)(4) of the Clean Air Act amended Dec. 31, 1970, P.L. 91-604, 84 Stat. 1679.

Finally, Congress knew how federal enclaves within a landlocked state were treated for purposes of the Clean Air Act. The 1970 Act contained Section 118, which stated at that time that each department, agency, and instrumentality of the Federal government having jurisdiction over any property or facility shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements. See Section 118 of the Clean Air Act as amended Dec. 31, 1970, P.L. 91-604, 84 Stat. 1679.

Against this backdrop, Congress enacted the DPA. The relevant provisions of the DPA state that a deepwater port shall be considered a "new source" for purposes of the CAA, and that conformity with all applicable provisions of the CAA is a condition of issuance of a deepwater port license. See 33 U.S.C. §§ 1502(9) and 1503(c)(6). At that time, applicable provisions for new sources included Sections 110, 111, 112 and 116 of the Clean Air Act.[9] Section 1518(a) of the DPA extends the Constitution and laws of the United States "to deepwater ports . . . and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State." Section 118 of the Clean Air Act speaks directly to the question of how an area of exclusive Federal jurisdiction located within a State is to be treated for purposes of the Clean Air Act: the state implementation plan is to apply. Section 1518(b) of the DPA states that the "law of the nearest adjacent coastal State . . . is declared to be the law of the United States, and shall apply to any deepwater port . . . to the extent applicable and not inconsistent with any provision or regulation" under the DPA or other Federal laws and regulations. Section 110 of the

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[8]Section 110 is now much broader in scope. The Clean Air Act was significantly amended in 1977 and 1990 to require that states adopt measures for the achievement or maintenance of national ambient air quality standards, including measures which require offsets from new sources. See 42 U.S.C. § 7503 and § 7410(a)(2)(C) and (D).

[9]The current Clean Air Act applicable provisions for new sources also include the offset and other requirements specified in Sections 172 and 173, and the preconstruction requirements for attainment areas in Sections 160 through 169b.

Clean Air Act provides a framework for determining whether state law is consistent with the Clean Air Act and approvable as a SIP rule. When state law is consistent with the Clean Air Act and the DPA, then Section 1518(b) of the DPA "federalizes" these state laws by providing that all such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States.

The structure of the Clean Air Act at the time the DPA was enacted supports our conclusion that the DPA did not intend to preempt local air quality laws which are consistent with the Clean Air Act, and in fact incorporated into the applicable SIP. The DPA is written so that the law which is currently in effect is the law which is to be applied. See 33 U.S.C. §§ 1518(a)(1) and 1518(b). The Clean Air Act has been significantly amended since 1975, as our nation has continued to struggle with the difficult task of achieving and maintaining national ambient air quality standards. As a result, state implementation plans have also been significantly amended. We are applying the current version of the Clean Air Act and the current District rules as approved by EPA into the SIP. We agree that local air regulations which are not part of a SIP might be differently treated under the DPA and the OCSLA. However, we do not address that issue here since Rule 26 is approved into the SIP, and application of Rule 26 is consistent with the Clean Air Act.

C. **Marine Vessel Emissions: In determining offsets required for the stationary source, emissions from marine vessels which load or unload at the Cabrillo Port shall be included only to the extent Section 26.2.B of Rule 26 requires such marine vessel emissions to be included and to the extent that such a requirement is consistent with both the Clean Air Act and the Deepwater Port Act.**

We agree with the conclusion that under federal law, California's territorial boundaries extend only three nautical miles from the coast and include a three mile band around the islands off the coast but exclude waters between the islands and the coast of California. See United States v. California, (1965) 381 U.S. 139 at 170-172. We therefore agree that the only combustion emissions in waters within the territorial boundaries of California would be from assist tug, crew and supply boats, while cargo vessels will most likely remain outside of the territorial boundaries of California.

We disagree with other arguments made by Hollister & Brace concerning treatment of vessel emissions, but we are still carefully considering this issue. First, there is an important distinction between direct regulation of marine vessels (such as regulation of the emissions from marine engines) versus accounting for the vessel emissions in the potential to emit of a stationary source, and then including the vessel emissions in offset calculations and impact analysis for that stationary source. EPA agrees that direct regulation as independent stationary sources of the marine vessels' internal combustion engines used for transportation would be inconsistent with the Clean Air Act.

We are not proposing to directly regulate marine vessel engines. We are only considering

the extent to which marine vessel emissions are to be included in the potential to emit of the stationary source, and thus the extent to which vessel emissions are included in offset calculations and the impact analysis for the deepwater port. To clarify the extent to which offsets might be required for marine vessel emissions, we have asked Ventura District to provide us with an interpretation of Rule 26. Finally, we have considered whether Rule 26 is consistent with the DPA. To shed light on how the language of the DPA should be interpreted, we have also looked at Congressional intent in passing the DPA, and as a result we are also looking at how vessel emissions would be treated in an onshore LNG facility located in a similar area within the state of California, the proposed Long Beach LNG facility. Based on this review, as described in detail below, we conclude that Rule 26 as interpreted by Ventura District is consistent with the CAA and the DPA.

District Interpretation of Ventura Rule 26

In a letter dated May 27, 2004, we requested that the District provide to us its interpretation of how the applicable District Rules attribute vessel emissions to a stationary source. In a letter dated June 18, 2004, the District provided to EPA its interpretation of how the offset requirements of Rule 26 are applied. The District stated that the following vessel emissions are ***not*** included in the emissions which are counted when calculating offsets:

- hoteling emissions while the vessel is docked at the FSRU.

- combustion emissions (which include both propulsion and hoteling emissions), from supply boats or LNG tankers while outside District waters, (i.e., outside 3 miles from the shoreline)

In our permitting action, we will require no offsets for the above-listed vessel emissions.

The District stated that the following vessel emissions ***are*** included in the emissions which are counted when calculating offsets:

- Emissions resulting from loading and unloading of LNG tankers or supply boats at the stationary source/Cabrillo Port.

- Combustion emissions from the supply boats (or LNG tankers) while operating ***in*** District waters (i.e., within 3 miles of the shoreline).

- Fugitive emissions or reactive organic compound emissions that are displaced into the atmosphere from the supply boats or LNG tankers while the vessel is (1) docked at the stationary source/floating storage and regasification unit or (2) operating in California coastal waters adjacent to the District. (Example: if oil tankers open up the lids to their oil tanks, the air which is "burped" out as a result would include fugitive emissions or reactive organic compound emissions that would be displaced into the atmosphere and subject to offsets.)

In preparing an offset package, BHP should include offsets for the above-listed vessel emissions.

Whether Rule 26 is consistent with the Clean Air Act.

EPA's April 5, 2004, letter found Ventura District rules, including Rule 26, applicable to the Cabrillo Port. Rule 26 has been approved by EPA into the Ventura District portion of the California SIP, as the applicable NSR rule. Rule 26 is consistent with the provisions of the Clean Air Act.

Hollister & Brace cite to NRDC v. USEPA, 725 F.2d 761 (D.C. Cir. 1984) to argue that EPA cannot require consideration of the transit emissions from marine vessels when issuing permits for associated onshore facilities, as the effect of this decision is that marine vessel emissions are not subject to mandatory regulation through indirect source review under the CAA. Hollister & Brace at page 7. We agree that marine vessel transit emissions are not subject to mandatory regulation through indirect source review mandated to be included in a SIP or FIP by EPA.[10] However, nothing in this court decision bars EPA from implementing and enforcing a SIP rule in which a state or local air district requires offsets for some of the marine vessel emissions related to a port.

Hollister & Brace argue that the CAA precludes EPA involvement in indirect source review. Hollister & Brace at page 7. The CAA's requirement is that EPA not ***mandate*** inclusion of an indirect source review program in a SIP or include it in a Federal Implementation Plan (FIP), except as authorized by Section 110(a)(5)(B). CAA Section 110(a)(5)(A), 42 U.S.C. § 7410. However, the CAA states "Any State may include in a State implementation plan...any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan." CAA Section 110(a)(5)(A)(i), 42 U.S.C. § 7410. EPA's review of the port for permitting purposes is not equivalent to mandating inclusion of an indirect source review program into a SIP (or including it in a federal implementation plan). In this case, we are applying an existing SIP rule, Rule 26, and the CAA states that EPA may approve and enforce indirect source review programs which the State chooses to adopt and submit.

Hollister & Brace cite to Santa Barbara County APCD v USEPA, 32 F.3rd 1179 (D.C. Cir. 1994), to bolster their argument that emissions from vessels involved in transporting cargo, supplies or personnel to or from a deepwater port facility are excluded from calculations of emissions from the stationary source. Hollister & Brace at page 6 and 7. Perhaps due to the brevity of the court opinion, Hollister & Brace mischaracterized this decision. When EPA

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[10]Except as authorized by 110(a)(5)(B), which authorizes EPA to promulgate, implement and enforce regulations for indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources. Thus, EPA does have certain authority to promulgate regulations for indirect sources. 42 U.S.C. § 7410(a)(5)(B).

promulgated its OCS regulations in 1991, section 55.2 of the OCS final rule provided that the only marine vessels which were to be *independently* considered "OCS sources" -- and hence subject to *direct* regulation under the final rule -- were drill ships. See 56 Fed. Reg. 63774 at 63777. However, emissions from marine vessels servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source and within 25 miles of the OCS source were included in the definition of "potential to emit" of an OCS source. Id. As a result, offsets were required for marine vessel emissions when the vessel was en route to or from the OCS source and within 25 miles of the OCS source. Id. See also 57 Fed. Reg. 40792 at 4093-94. Santa Barbara APCD was arguing that EPA had authority to *directly* regulate vessels which were on the outer continental shelf as OCS sources, and that the OCS rule was not sufficient because it only provided for offsets, but not emission controls, to mitigate in-transit vessel air pollution. See Brief of Petitioner Santa Barbara APCD (filed December 22, 1993) at page 29. EPA was arguing that Congress intended that emissions from marine vessels in transit be included in the emissions from the associated OCS source. See Brief for the Respondents filed November 22, 1993, at pages 14-27. The court agreed with EPA that marine vessels merely traveling over the OCS were not OCS sources. Santa Barbara APCD, 32 F.3rd at 1181. The court did not address EPA's interpretation that vessel emissions be included in the calculation of OCS source offsets, as that issue was not raised by petitioners. A full understanding of the Santa Barbara APCD case also shows that there is a difference between including vessel emissions when calculating offsets required from a stationary source and directly regulating the vessel as an independent source.

Santa Barbara APCD was also disputing EPA's creation of three zones for the purpose of calculating the necessary amount of offsets. EPA declined to implement the Santa Barbara offset standards because straight application of the distance penalties in the Santa Barbara rule would create a disincentive for an OCS source to obtain offsets onshore. As Hollister & Brace point out, the court struck down this attempt by EPA to soften the impact of applying an onshore offset rule to a source located on the OCS. The court stated:

> The statute does not speak of affording similar regulatory treatment; instead, it explicitly calls on the agency to promulgate the same offset "requirements... as would be applicable if the source were located in the corresponding onshore area."...While Congress's intent may have been misguided, we think it was clear, and thus the agency is bound to give it effect."

Id., 32 F.3rd at 1182. The court vacated EPA's regulations which allowed offsets from zones 2 and 3 to be obtained without distance penalties. When Congress says to apply the laws of the onshore area to a stationary source on the OCS, EPA cannot change the offset rules in a way that deviates from the relevant statutory language. It is for precisely this reason that we have attempted in the case of this proposed deepwater port to gather the necessary information to determine how the relevant statutory language of the DPA and CAA should be applied in this case.

California Treatment of Onshore LNG Port facility

Ventura's interpretation of Rule 26 does not impose substantially greater burdens on an offshore facility than on a similarly situated onshore facility. An application for an air permit has been submitted to South Coast Air Quality Management District ("South Coast") for a LNG port facility at Long Beach (the proposed "Long Beach facility"). The Long Beach facility is not a deepwater port, but an onshore facility. The rule being applied to the Long Beach facility is different than Ventura Rule 26 because the California SIP has different rules applicable in South Coast. The South Coast NSR Regulation 13, at rule at 1306(g), **does** have a comparable (but not identical) requirement to include as emissions from the stationary source certain emissions from marine vessels, although the mechanism for this requirement is different. The South Coast Rule does not define the facility to include emissions from associated vessels. See South Coast Rule 1302(m). Vessels are clearly mobile sources. See South Coast Rule 1302(q). However, South Coast Rule 1306(g) states "The following mobile source emission increases or decreases directly associated with the subject sources shall be accumulated: (1) Emissions from in-plant vehicles; and (2) All emissions from ships during the loading or unloading of cargo and while at berth where the cargo is loaded or unloaded; and (3) Nonpropulsion ship emissions within Coastal Waters under District jurisdiction." This South Coast rule is being applied to the proposed Long Beach facility. The offset analysis done for the Long Beach facility includes emissions from water heaters, hoteling, and non-propulsion emissions of associated shipping. South Coast excludes all emissions from ships arising from propulsion of the ship.

Because EPA has made a determination that the Ventura District rules apply, the South Coast rule does not apply to the proposed Cabrillo port. However, the intent of Congress in enacting the DPA was to allow state environmental laws which applied to onshore facilities to also apply to offshore facilities. See Senate Report 93-1217 *reprinted in* 1974 U.S.C.C.A.N. 7529, 7584.[11] In considering whether requiring the offsets of Rule 26 would be consistent with the DPA, we have considered the treatment of the Long Beach facility. There are differences in how the South Coast and Ventura Rules treat vessel emissions when calculating the required offsets, but Ventura's interpretation of Rule 26 does not impose substantially greater burdens on an offshore facility than on a similarly situated onshore facility.

Whether Rule 26 is consistent with the DPA.

Having concluded that Rule 26 is consistent with the Clean Air Act, we turn to whether Rule 26 is consistent with the Deepwater Port Act. Hollister & Brace argue that the DPA does not require or permit the attribution to Cabrillo Port of emissions from marine vessels when those vessels are in transit to or from the port or when such vessels are "hoteling." We believe that this

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[11]In the discussion of Section 19, relationship to other laws, Senate Report 93-1217 states that the provision applying the laws of the nearest adjacent coastal state "also prevents the Deepwater Port Act from relieving, exempting or immunizing any person from requirements imposed by state or local law or regulation. In addition, States are not precluded from imposing more stringent environmental or safety regulations."

argument is largely moot in this case, as Rule 26 (as interpreted by Ventura District) does not require offsets for hoteling emissions or combustion emissions (which include both propulsion and hoteling emissions) from vessels which are further than three miles from shore.

Rule 26 does require offsets for emissions resulting from loading and unloading of vessels at the stationary source, and combustion emissions from vessels while such vessels are operating ***in*** District waters (i.e., within 3 miles of the shoreline). Rule 26 also requires offsets for fugitive emissions or reactive organic compound emissions that are displaced into the atmosphere from vessels whether the vessel is docked at the FSRU or operating in California coastal waters adjacent to the District. We do not believe that these requirements conflict with any part of the DPA.

D. Attainment/Non-Attainment Classification of OCS

Hollister & Brace argue that Cabrillo Port should not be treated as if it were located in a non-attainment area, stating that a PSD area is one designated pursuant to CAA § 107 and 40 CFR Part 81 as either "attainment" or "unclassifiable" for a criteria pollutant. Hollister & Brace state that the FSRU is situated in an offshore area that has not be designated as "non-attainment". However, the offshore area where the FSRU will be located has also not been designated as "attainment" or "unclassifiable" at 40 CFR Part 81. All parts of the state of California have been put into attainment, nonattainment, or unclassifiable areas under CAA Section 107(d). Ventura County excluding the Channel Islands of Anacapa and San Nicolas Islands is classified as a severe nonattainment area for the ozone one-hour standard, and a moderate nonattainment area for the ozone 8-hour standard. All of the Channel Islands, including Anacapa and San Nicolas, are designated as unclassifiable/attainment for the ozone 1-hour and 8-hour standards. Ventura County and all of the Channel Islands are designated as attainment, unclassifiable, or better than national standards for SO2, carbon monoxide, PM-10, and NO2. 40 C.F.R. § 81.305. To date, EPA has not promulgated separate area designations for portions of the outer continental shelf, because existing outer continental shelf sources are covered by the OCS Air Regulations. The DPA requires that EPA apply the law of the onshore area, to the extent consistent with the DPA and other federal law. Depending upon the facts of the situation, EPA might determine that it would be inconsistent with the CAA, or not "applicable" within the meaning of section 1518 of the DPA, to apply the nonattainment status of the onshore area to a deepwater port at a greater distance from shore than the proposed port. In this case, however, treating the source as if it were located within the onshore ozone nonattainment area is not inconsistent with the Clean Air Act.[12]

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[12]EPA has included in the EPA-approved California SIP emissions inventories which include emissions on the outer continental shelf. See 62 Fed. Reg. 1150, 1173 (Ventura District 1990 base year inventory included OCS emissions, despite Ventura District argument that OCS emissions were outside the District's nonattainment area, because CARB had not requested exclusion of OCS emissions, and the totals were consistent with the California SIP submittal).

E. Federal Conformity Determination

Hollister & Brace also raise the issue of the federal conformity rule (40 C.F.R. Part 51, subpart W). The purpose of the federal conformity rule is to implement CAA section 176(c) (42 U.S.C. § 7506(c)), which requires that all Federal actions conform to an applicable implementation plan. 58 Fed. Reg. 63214. In this case, the applicable implementation plan would be the Ventura District portion of the California SIP, and Ventura District Rule 220 simply adopts by reference the provisions of 40 C.F.R. Part 51, Subpart W.

We agree that no conformity determination is required for the portion of the project which is covered by a preconstruction permit issued by EPA. EPA would be issuing a preconstruction permit for the FSRU, to be located outside of state territorial waters. However, the portion of the project which is covered by a preconstruction permit issued by EPA is not the entire Cabrillo Port project. A joint NEPA and CEQA (California Environmental Quality Analysis) is being prepared for this project, and both NEPA and CEQA will address conformity.

We would be happy to discuss the issues which might be raised by this conformity analysis further with BHP and the Coast Guard (as the Coast Guard has the lead responsibility to conduct the conformity analysis).

F. Timeline, Resolution

We will continue to work with BHP to clarify the unresolved issues concerning these

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There are also concerns that emissions on the outer continental shelf can be transported and contribute to nonattainment onshore. For example, in the context of analyzing *direct* regulation of new marine diesel engines used primarily for propulsion power on ocean-going marine vessels such as container ships, tankers, bulk carriers, and cruise ships with per-cylinder displacement of 30 liters or more that are installed on vessels flagged or registered in the United States ("Category 3" marine diesel engines), emission inventories were prepared which included emissions from vessel traffic within 25 nautical miles of port areas ("in-port emissions") and emissions from vessel traffic outside of port areas but within 175 miles of the coastline ("non-port emissions"). See "The Final Regulatory Support Document: Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder" (EPA 420-R-03-004 January 2003). This report included non-port emissions within 175 miles of the coastline in the inventory estimates on the assumption that emission transport could bring these emissions on to shore and affect U.S. ambient air quality. Although 175 miles may be considered a conservative assumption, the authors considered studies of the outer continental shelf area off the coast of Southern California which concluded that emissions within 60 nautical miles of shore could make it back to the coast or that the region of "coastal influence" was perhaps 30 nautical miles. Id. at 2-2. Cabrillo Port would be approximately 14 miles offshore.

offset requirements. Based upon our preliminary analysis, and the clarification provided by Ventura District, we suggest that BHP provide an offset package which includes offsets for emissions from the FSRU, including emissions resulting from loading and unloading of vessels at the stationary source, and combustion emissions from vessels while such vessels are operating ***in*** District waters (i.e., within 3 miles of the shoreline). The offset package should also include offsets for fugitive emissions or reactive organic compound emissions that are displaced into the atmosphere from vessels whether the vessel is docked at the FSRU or operating in California coastal waters adjacent to the District (to the extent such emissions could occur with LNG tankers and the other vessels associated with the Cabrillo Port). We look forward to receiving information concerning offsets from BHP so that we can move forward with the air permitting process.

EPA Region 9 is also ready and willing to work with you, and the relevant state authorities, to utilize existing flexibility in the applicable law and regulations to allow BHP to be innovative in obtaining the offsets which are required for the project.

Timing: Once we receive a commitment from BHP to prepare an offset package, BHP and EPA can work with the Coast Guard to ensure that the NEPA (and CEQA) analysis can go forward in a way that ensures that adequate information on offsets is available in that analysis. We will need the offset package itself to proceed with preparation of a draft permit. Upon receipt of an adequate and complete offset package, the air permits office will need about two months to prepare a permit (Authority to Construct). The draft permit would then be published, and there is a thirty day period for public comment. After the close of the public comment period, Region 9 air permits office will respond to comments and finalize the permit. When a permit is issued and uncontested, it become effective in thirty days. However, permits can also be appealed to the Environmental Appeals Board (EAB) within EPA. The EAB would follow its procedures for determining if any of the issues raised require review or changes to the permit.

Title V permit timing: In our May 20 meeting, we discussed the timing of EPA issuing a title V operating permit. As we discussed, an operating permit can be issued at the same time as a preconstruction permit, or separately. Because operating permits have annual requirements (such as payment of fees and certification of compliance) which might not make sense if there is a significant lag time between issuance of a preconstruction permit and final construction and operation of a facility, the operating permit application is often submitted later and the operating permit issued after operations have begun. Operating permits contain the requirements found in the preconstruction permit (and any other applicable requirements and title V requirements such as monitoring, recordkeeping and reporting requirements), but operating permits must be renewed every five years. Region 9 has been proceeding with the understanding that the air permit application is a preconstruction permit, and that an operating permit will be issued separately. If BHP would prefer that EPA issue an operating permit at the same time that we issue a preconstruction permit, BHP should clearly state that desire to us, and submit an operating permit application. If we do not receive an operating permit application, we shall proceed with our original plan to issue the preconstruction permit initially, and expect BHP to

apply for an operating permit pursuant to the timeframe set forth at 42 U.S.C. §7661b(c) and 40 C.F.R. § 71.5(a)(1).

CONCLUSION

Based on the above reasons, we conclude that Ventura District Rule 26 applies. We are requesting that you supplement the December 2003 air permit application to include the requirements of District rules, specifically NSR Rule 26. Thank you for your patience in this matter. These difficult issues of first impression require time to gather and analyze the relevant information, including the letter from Hollister & Brace in which BHP expresses its views, and time for EPA to coordinate with various affected programs in EPA and other federal agencies. I assure you that EPA Region 9 will give fair and timely consideration to BHP's permit applications. If you have any questions concerning this letter, or the review of your application, please call Nahid Zoueshtiagh at (415) 972-3978 or Margaret Alkon at (415) 972-3890.

Sincerely,

Gerardo C. Rios
Chief, Permits Office
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